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January 12, 1984

Mr. William S. Tassie, Chief
Liquor Law Enforcement
New Hampshire Liquor Commission
Storrs Street
Concord, New Hampshire 03301

Dear Mr. Tassie:

By memorandum you asked whether it would be lawful for the Commission to authorize the sale of beer and wine by a lessee of a portion of a grocery. Your memorandum indicated that this question arose from a request by Shaw's Supermarket to approve an arrangement whereby Shaw's would lease a portion of a store to a lessee, who in turn would apply for an off-sale permit under RSA 181:5. Beer and wine purchases would be made through designated Shaw's cash registers. The operators of the registers would be employees of Shaw's, although the lessee would train the operators as to beer and wine sales and have the right to restrict any particular employee from operating registers designated for beer and wine sales. Further, Shaw's would collect the money generated by beer and wine sales, and remit the proceeds to the lessee. In a subsequent conversation, you indicated that Shaw's presently holds the maximum six off-sale permits allowed by RSA 181:22.

Assuming that the lessee operated as a grocery store within the definition of RSA 181:1, VI, as you indicated they intend to do, your question necessitates a determination of whether this arrangement would result in Shaw's exceeding the maximum six off-sale permits. In our opinion, the arrangement would result in Shaw's holding, directly and indirectly, more than six off-sale permits.



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RSA 181:22, II provides:

"No person shall directly or indirectly hold more than six off-sale permits at one time...."

RSA 181:22, II clearly applies to corporations as well as natural persons. New Hampshire Wholesale Beverage Assn. v. New Hampshire State Liquor Commission, 100 N.H. 5 (1955). The constitutionality of RSA 181:22, II was upheld in Granite State Grocers Ass'n v. State Liquor Commission, 112 N.H. 62 (1972). In that case, the court found the purpose of the limitation to be to supervise and fractionalize the alcoholic beverage industry, thereby preventing the concentration of control within the industry.

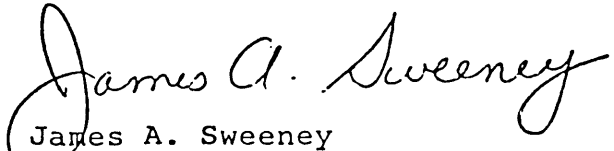
Under the proposed arrangement, Shaw's would retain a substantial link to the sale of beer and wine. Purchases would be made through Shaw's cash registers manned by employees of Shaw's. The money generated by beer and wine purchases would be collected by Shaw's in the first instance, and then remitted to the lessee. The proposed arrangement does not indicate whether all of the money would be remitted to the lessee, or whether Shaw's would retain a portion as a fee. In effect, Shaw's would be directly and substantially linked to the operation of the beer and wine sales. In our opinion, this arrangement is contrary to the legislative intent in enacting RSA 181:22, II, and would result in Shaw's Supermarket "directly or indirectly" holding more than six off-sale permits.

In addition, if both Shaw's Supermarket and a proposed lessee were controlled by the same person or group of persons, Shaw's would be "indirectly" holding the off-sale permit of the proposed lessee. New Hampshire Wholesale Beverage Assn. v. New Hampshire State Liquor Commission, supra. However, our determination that the proposed arrangement does constitute an indirect holding of an off-sale permit by Shaw's obviates the need to investigate the corporate structure of Shaw's and the proposed lessee.

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I trust that this has answered your question. If you have any further questions, please do not hesitate to call me.

Very truly yours,


James A. Sweeney
Attorney
Division of Legal Counsel

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